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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, APPELLANT

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (App. A, pp. 1a-10a)[1] is reported at 335 F. Supp. 641.

JURISDICTION

The judgment of the district court dismissing the indictment was entered on January 6, 1972 (App. B, p. 11a). On January 14, 1972, a notice of appeal to this Court was filed under 18 U.S.C. 3731 (1964 ed.),

[1] All "App." references are to the Appendix to the government's Jurisdictional Statement.

since the district court's dismissal of the indictment was based upon its construction of the underlying statute. See *United States* v. *International Minerals and Chemical Corporation*, 402 U.S. 558; *United States* v. *Fabrizio*, 385 U.S. 263. This Court noted probable jurisdiction on May 15, 1972.[2]

QUESTION PRESENTED

Whether an agreement by union officers and members to commit unlawful acts of violence, made during the course of a lawful strike against an employer engaged in interstate commerce and for the purpose of coercing the employer to consent to higher wages and other union contract demands, constitutes a violation of the Hobbs Act, 18 U.S.C. 1951.

STATUTE INVOLVED

The Hobbs Act, 18 U.S.C. 1951, provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this sec-

[2] The 1971 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case. The amendment is effective only as to cases begun in the district courts after its effective date, January 2, 1971; the present indictment was returned in October 1970. See *United States* v. *Jorn*, 400 U.S. 470, 474 n. 1, 477–478 n. 6.

tion shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means * * * all commerce between any point in a State * * * and any point outside thereof * * *.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On October 15, 1970, a one-count indictment was returned in the United States District Court for the Eastern District of Louisiana charging appellees with conspiracy to violate the Hobbs Act by engaging in acts of violence and destruction of property while the International Brotherhood of Electrical Workers ("IBEW") and Gulf States Utilities Corporation ("Gulf States") were negotiating a new collective bargaining agreement. The indictment (App. C) alleged that, between October 30, 1969, and June 2, 1970, Gulf States, as part of an electrical network serving several states, was in the business of furnishing electricity to communities in Louisiana and Texas; and that articles and materials necessary for the construc-

tion and maintenance of its facilities moved in interstate commerce.

According to the indictment, the employees of Gulf States were represented by Local 2286 of the IBEW. One appellee (Barton) was an officer of this Local. Some of the subcontractors employed by Gulf States were represented by Local 390 of the IBEW. Two of the appellees (Enmons and Bendo) were officers of this Local; the other (Woodward) was a member. The indictment charged that the four appellees conspired among themselves and with other unindicted co-conspirators (App. C, pp. 13a–14a):

> * * * to obstruct, delay, and affect commerce * * * and the movement in commerce of electrical energy and other articles and commodities by extortion * * * and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.
>
> It was a part of said conspiracy that the [appellees] and co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said [appellees] and co-conspirators, in that [appellees] and the co-conspirators, did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

It was also alleged that, in furtherance of the conspiracy, appellees, or persons acting at their direction, committed five acts of violence against the property of Gulf States, including blowing up one transformer substation, firing at three other transformer substations with high powered rifles, and draining oil from transformers to cause malfunctions in the equipment (App. C, pp. 14a–15a).

Appellees filed a motion to dismiss the indictment as not charging an offense under the Hobbs Act. Following a hearing, the motion was granted. The district court stated (App. A, p. 8a): "We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act."

The court deemed critical the fact that the increased wages and other monetary benefits sought to be obtained from the employer were for genuine and desired services. This, according to the court (*ibid.*), was the principal factor which distinguished the present case from the situation where "the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all." In such a situation, the court recognized (*ibid.*), the acts of violence and destruction to property would constitute extortion prohibited by the Hobbs Act.[3] Here, however, it held that, since the acts of violence were in furtherance of a legitimate end, *i.e.*, obtaining higher wages for needed and desired services, they were not

[3] The Court cited *United States* v. *Kemble*, 198 F. 2d 889 (C.A. 3), certiorari denied, 344 U.S. 843, as "good authority" for this proposition (App. A., p. 8a).

proscribed by 18 U.S.C. 1951. As the court below construed the statute (App. A, p. 9a), "neither the wages of bona-fide employees nor the 'right to negotiate employment contracts—without illegal disruption' constitute 'property' as contemplated by the Hobbs Act."

SUMMARY OF ARGUMENT

In dismissing the indictment in this case, the court below adopted an erroneous construction of the Hobbs Act. On the one hand, it recognized that where violent acts are utilized to obtain wages for "unneeded or unwanted services" (App. A, p. 8a), they can properly be condemned as extortionate conduct within the proscription of the federal statute. Yet, it then held that the very same conduct—or worse—cannot be reached under the Hobbs Act so long as such violence during a *bona fide* labor dispute is directed simply at securing higher wages for existing employees holding down necessary jobs. This distinction between services that are wanted and those that are unwanted finds no support in the language of the statute or its legislative background. It is, moreover, at odds with the essential thrust of this Court's decision in *United States* v. *Green*, 350 U.S. 415. Congress did not intend that extortion to achieve higher wages be treated differently from extortion to achieve featherbedding; the statute was designed to outlaw both.

ARGUMENT

THE PROHIBITIONS OF THE HOBBS ACT REACH MEMBERS OF LABOR UNIONS WHO EMPLOY EXTORTIONATE FORCE DURING A LAWFUL LABOR DISPUTE TO COERCE THE EMPLOYER TO CONSENT TO HIGHER WAGES AND OTHER MONETARY BENEFITS

The decision of the district court in this case curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to situations where wages are sought for superfluous and unwanted services. The statute on its face does not warrant such a narrow reading; those who enacted the legislation did not intend it to be so circumscribed; and, but for the decision below and perhaps one other (see pp. 19–20, *infra*), the courts apparently have heretofore not adopted such a limitation on the Act's coverage.

A. *The Statutory Language*

By its terms, the Hobbs Act, 18 U.S.C. 1951(a), reaches "[w]hoever in any way or degree obstructs, delays, or affects commerce" either by "robbery or extortion" or by using or threatening "physical violence to any person or property in furtherance of a plan or purpose" to rob or extort. The term "extortion" is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

This language is free from ambiguity and without qualification. Unlike its forerunner, Section 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979,[4] the Hobbs Act does not exempt from its intentionally broad coverage (see pp. 13–19, *infra*) a "person who * * * [o]btains or attempts to obtain * * * the payment of wages from a bona-fide employer to a bona-fide employee" (see Section 2(a) at n. 4, *supra*). Compare *United States* v. *Local 807*, 315 U.S. 521.[5] This Court, in *United Sates* v. *Green*, 350 U.S. 415, n. 5, recognized that the elimination in 1946 of the above-

[4] Prior to being amended by the Hobbs Act in 1946, Section 2 covered:

> Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b) * * *.

[5] In *Local 807*, the Court held that members of a city truck-drivers' union, who had sought by threat of violence to procure wages from their employers for superfluous service, were explicitly exempted from coverage under Section 2 of the 1934 Act by the language quoted above.

quoted qualifying language of the earlier statute was a direct response to the Court's decision in *Local 807*. In considering the reach of the Hobbs Act amendment, it said (350 U.S. at 419; footnote omitted):

> * * * In the Hobbs Act, 60 Stat. 420, carried forward as 18 U.S.C. § 1951, which amended the Anti-Racketeering Act, the exclusion clause involved in the *Local 807* decision was dropped. The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding.

Accordingly, the Act covers attempts by union employees and officials through force or violence to obtain, with induced consent, "property" of an employer engaged in interstate commerce. The language nowhere suggests an exception in the area of labor relations where the "property" so taken, or sought to be taken, from the employer is the money equivalent of earned wages. The special exclusion for "wages paid * * * to a bona-fide employee" contained in the provision of the 1934 Act defining the term "property, money or valuable considerations,"[6] was explicitly deleted from the Hobbs Act. Thus, the fact

[6] Section 3 of the 1934 Act provided: "The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

that the payment allegedly extorted here took the form of higher wages does not except it from the Act's coverage.

Money in the form of earned wages, moreover, does not lose its character as "property" depending on the extortionists' underlying purpose for exacting payment. Contrary to the district court's suggestion (App. A. pp. 8a-9a), higher wages obtained for wanted services through threats or acts of violence stand on no different footing under the Hobbs Act than wages for unwanted services similarly obtained. The employer in both cases is subjected to pressure through fear of harm to his person or property to hand over money with which he would not have otherwise parted. This is the very evil that the inclusive statutory language was designed to reach, *i.e.*, "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

United States v. *Green, supra,* also answers any contention that the Hobbs Act applies solely to extortion that benefits the extortioner, but not to extortion that benefits only third persons, here the members of the union. In describing as "erroneous" the holding of the district court in that case that "the charged acts would be criminal only if they were used to obtain property for the personal benefit of the union or its agents, in this case Green," the Court flatly ruled that "extortion as defined in the statute in no way depends upon having a direct benefit conferred on the

person who obtains the property" (350 U.S. at 420). Furthermore, we disagree with the court below (App. A, pp. 9a–10a) that implicit in the broad statutory language is a special immunity for union employees and officials if the wages they have sought to obtain by unlawful extortionate means could have been sought, and perhaps obtained, by lawful means. Such a view cannot be squared either with the Hobbs Act or with similar prohibitions elsewhere in the criminal law. The fact that money may be obtained through skilled bargaining or through forms of moral or other "coercion" which the law permits is no excuse for obtaining the same money at gun point. Similarly, the fact that a demand by a union officer might be lawfully asserted during collective bargaining negotiations furnishes no justification for the attempt to accomplish the same end through the use of force or violence or the threat thereof.

This Court's decision in *United States* v. *Green, supra,* apparently recognizes this principle. While the indictment in that case charged the extortion of wages for superfluous and unwanted labor services,[1] the district court (135 F. Supp. 162) held that union demands for payment to employees for performing

[1] The *Green* indictment charged a local union and its members with acts of extortion against an employer in an attempt to force him to consent to a union contract for certain maintenance work, and thereby obtain "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers * * *" (350 U.S. at 417).

"made work" were not, under this Court's featherbedding decisions (see *American Newspaper Publishers Association* v. *National Labor Relations Board*, 345 U.S. 100; *National Labor Relations Board* v. *Gamble Enterprises*, 345 U.S. 117), unfair labor practices. In this Court, that aspect of the lower court's decision in *Green* was not disputed (350 U.S. at 418). The fact, however, that the same objective which the union employees and officials in *Green* sought to obtain through threatened and actual force could have been sought, and perhaps obtained, lawfully at the bargaining table, did not remove them or their conduct from the Act's coverage. An otherwise benign motive of fostering legitimate labor union objectives is no excuse under the Hobbs Act for using methods constituting extortion or robbery to achieve that end.

In contexts outside the field of labor relations, it has been recognized that the proscription in the Hobbs Act on extortionate conduct applies not merely to the wrongful use of force and threats in seeking illegitimate ends, but also has equal application to actual and threatened force for the purpose of attaining legitimate ends. In *Battaglia* v. *United States*, 383 F. 2d 303 (C.A. 9), certiorari denied, 390 U.S. 907, the Ninth Circuit affirmed a Hobbs Act conviction based on a demand for the use of the victim's business establishment as a location for the defendant's coin-operated pool table—a demand which would not have been subject to criminal sanction if enforced by legitimate business pressures rather than by threats of violence. Similarly, in *United States* v. *Tropiano*, 418

F. 2d 1069 (C.A. 2), certiorari denied, 397 U.S. 1021, the Second Circuit held that the wrongful use of threats to obtain the right to solicit business constituted extortion. And see *United States* v. *Glasser*, 443 F. 2d 994 (C.A. 2), certiorari denied, 404 U.S. 854, involving the unlawful use of force by officers of a glassworkers' union to obtain the use of union glaziers.

Nothing in the Hobbs Act itself or its legislative history (see pp. 14–19, *infra*) suggests that any different rule was contemplated for members of labor unions. But that is precisely the effect of the district court's construction of the statutory language as covering in the field of labor relations only extortionate conduct aimed at obtaining wages in payment for unwanted, as opposed to wanted, services. Such a restrictive reading is, we submit, contrary to both the letter and the spirit of the Act.

B. *The Legislative Framework*

The legislative history of the Hobbs Act shows that Congress intended the statutory language to sweep as broadly as the written words suggest. We have already noted this Court's observation in *United States* v. *Green*, *supra*, 350 U.S. at 418–419, that the basic reason leading to enactment of the provisions involved here was the *Local 807* decision (315 U.S. 521), construing Section 2 of the Anti-Racketeering Act of 1934, 48 Stat. 979–980, which contained an exception to the prohibition against exaction of valuable considerations by force or violence for "the payment of wages by a bona-fide employer to a bona-fide employee." This exclusionary clause was held in *Local*

807 to protect from federal prosecution union members who engaged in threats or acts of violence to coerce employers to meet union wage demands.

Following the decision, Congress quickly moved to amend the 1934 Act, in order in the words of Representative Gwynne of the House Judiciary Committee (89 Cong. Rec. 3201) "to rewrite the law and leave out that exception on which the Supreme Court decision is based." A number of bills were introduced in both the House and Senate; all had as a common objective to extend the Anti-Racketeering Act's coverage to "the employer-employee relationship" (*United States* v. *Green, supra,* 350 U.S. at 419). The statement of Congressman Hobbs, first made when he introduced an early version of what came to be known as the Hobbs Act (89 Cong. Rec. 3217) and later repeated when he submitted the bill that was eventually enacted into law (91 Cong. Rec. 11912), aptly reflects the general mood of the legislators:

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.
>
> * * * * *
>
> This bill is drawn in response to the challenge of the following quotation from the majority opinion [in *Local 807*]:
>
> "This does not mean that such activities are beyond the reach of Federal legislative control. Nor does it mean that they need go unpunished."

The proponents of the legislation made it clear that they intended the statute to have broad coverage.[8] As stated during debates on the floor of the House (91 Cong. Rec. 11843–11844):

> MR. SUMNERS of Texas: There is nothing in this bill dealing with persons connected with organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.
>
> MR. MICHENER: That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and by robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity. * * *
>
> MR. ROBINSON of Kentucky: Just one other point on that. It does not apply to labor unions alone, it applies to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else.
>
> MR. MICHENER: Why, of course. All are treated alike and no group is given special per-

[8] See 91 Cong. Rec. 11841 (remarks of Rep. Cox); 91 Cong. Rec. 11844 (remarks of Rep. Hoffman); 91 Cong. Rec. 11900 (remarks of Rep. Hancock); 91 Cong. Rec. 11901 (remarks of Rep. Hobbs); 91 Cong. Rec. 11903, 11904 (remarks of Rep. Gwynne); 91 Cong. Rec. 11905 (remarks of Rep. Robson); 91 Cong. Rec. 11907 (remarks of Rep. Fellows); 91 Cong. Rec. 11909 (remarks of Rep. Vursell); 91 Cong. Rec. 11910–11911 (remarks of Rep. Springer); 91 Cong. Rec. 11913 (remarks of Rep. Whittington); 91 Cong. Rec. 11918 (remarks of Rep. Baldwin).

mission to violate the law. Labor should not ask for such exception.

Similar views were expressed by Congressman Whittington, speaking in support of the bill that was eventually passed (91 Cong. Rec. 11913):

> The bill is to prevent a repetition of the physical violences by members of labor unions on those engaged in interstate commerce. * * *
>
> * * * * *
>
> The pending bill will provide for punishing racketeers who rob or extort. There is no justification for labor unions opposing the bill as it constitutes no invasion of the legitimate rights of labor. Robbery and extortion by members of labor unions must be punished. Labor unions owe that much to the public. In demanding the protection of laws, labor unions should urge that those engaged in legitimate interstate commerce be protected from robbery and extortion.

There were, to be sure, those who objected to the proponents' sweeping response to *Local 807*. They recognized that by simply deleting the exception contained in the 1934 Act, the protection it once afforded to labor would be *totally* eliminated, whether the wrongful use of force and threats was designed to achieve illegitimate ends, *i.e.*, payment for superfluous services as in *Local 807*, or was aimed at attaining objectives considered to be legitimate, *i.e.*, higher wages for wanted services as in the present case. Thus, Representative Marcantonio admonished that repeal of the exclusionary clause would "* * * leave the field now wide open for the prosecution of labor

for any activity * * *" (91 Cong. Rec. 11918). Others voiced a like concern. See 91 Cong. Rec. 11846, 11919–11920 (remarks of Rep. LaFollette); 91 Cong. Rec. 11901–11903, 11905, 11913 (remarks of Rep. Celler).

During the floor debate, Representative Celler attempted to insert in the bill an exception for cases where the payment sought to be exacted through violence or threats of violence was "wages paid by a bona-fide employer to a bona-fide employee" (91 Cong. Rec. 11913). Representative Hobbs, speaking in opposition to this amendment, argued (91 Cong. Rec. 11914) that it was "substantially the same as [the exception in the 1934 Act] * * *"; similar objections were made by Representatives Russell (91 Cong. Rec. 11914), Walter (91 Cong. Rec. 11914–11915) and Baldwin (91 Cong. Rec. 11918), and the Celler amendment was rejected (91 Cong. Rec. 11919).

Representative LaFollette then offered an amendment which would have continued the 1934 exception in substantially the same form but would have redefined the phrase "payment of wages by a bona-fide employer to a bona-fide employee" so as to make the Act cover any payments made in response to force or violence. While this proposal preserved at least some of the protection accorded to labor under the original exclusionary clause (though severely restricted), and at the same time went a long way toward meeting the principal objective of the bill's proponents—*i.e.*, "to prevent a recurrence of what happened in the Supreme Court opinion [in *Local 807*]" (91 Cong. Rec. 11919, remarks of Rep. La-

Follette)—it, too, was voted down (91 Con. Rec. 11921). As Representative Gwynne pointed out in opposition to the change (91 Cong. Rec. 11920), "it would constitute an open invitation to the Supreme Court to decide that case the same, if it should come before them again * * *."

The House then passed the legislation in its present form (91 Cong. Rec. 11922). Six months later the Senate, without discussing *Local 807* or the exclusion clause in the earlier statute, took similar action (92 Cong. Rec. 7308).

As this survey of the legislative history demonstrates, the proponents of the Hobbs Act successfully resisted virtually all efforts to include qualifying language that might suggest a limitation on the Act's applicability in the area of employer-employee relations. The only concession to the opponents of the statute was the insertion of Section (c), enacted to dispel any notion that labor statutes already in force, which protected the legitimate method of striking to obtain higher wages would be in any way abrogated or weakened.[9] But, as this Court stated in *United States* v. *Green, supra*, 350 U.S. at 420, that savings clause did not curtail the reach of the statute: "There is nothing in any of those Acts * * * that indicates any protection for unions or their officials in attempts to get personal property through threats of force or

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[9] 18 U.S.C. 1951(c) provides: "This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45."

violence. These are not legitimate means for improving labor conditions."

C. *The Hobbs Act Reaches Cases Like This One*

Both the statutory language and the legislative history thus leave no doubt, we submit, that Congress framed the Hobbs Act to reach just the sort of activity which is alleged in the present indictment (see pp. 4–5, *supra*). Under 18 U.S.C. 1951, extortion has no place as a means of obtaining higher wages and other monetary benefits for union members. Here, the allegations of the indictment, which must be accepted for present purposes, specify that the appellees as "part of [a] conspiracy" to force Gulf States to agree to a union contract "calling for higher wages and other monetary benefits" (App. C, p.14a) committed at least five acts of violence involving the shooting and sabotage of Gulf States' transformers and the blowing up of a company transformer substation (App. C, pp. 14a–15a). It is difficult to conceive of activity more plainly fitting within the statutory concept of extortionate conduct.

What is involved here is something far different from the incidental injury to person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute—such as, for example, the throwing of a rock by an employee on a picket line through the employer's window. As the Ninth Circuit pointed out recently in *United States* v. *Caldes and Lowery*, 457 F. 2d 74, 77, "often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor

but intentional damage is done to the property of the employer." Cf. *National Labor Relations Board* v. *Burnup & Sims*, 379 U.S. 21. It might well be appropriate to regard such conduct, as the Ninth Circuit did in *Caldes and Lowery* (457 F. 2d at 78), as simply "the by-product of the frustration * * * engendered by a prolonged, bona fide collective bargaining negotiation * * *," and thus to characterize the acts as nothing more than "mischievous misconduct" (457 F. 2d at 78).[10] Spontaneous violent reactions of this sort may well "not partake of the nature of extortion" (*United States* v. *Local 807, supra*, 315 U.S. at 523), since there is probably no formulated intent to coerce the employer to part with his property.

But that question—*i.e.*, whether the threatened or actual violence was committed with an intent that the victim pay over money in response to such a show of force or was merely an isolated response provoked by the abrasive atmosphere on the picket line—is a

[10] *Caldes and Lowery* involved a claim of extortion in connection with collective bargaining negotiations between the Laundry and Drycleaning International Union, Local 369, and Mission Linen Supply Company. On two separate occasions, members of the union were seen throwing a vial of green dye into a laundry hamper owned by the company. The court of appeals reversed a conviction under the Hobbs Act. While it indicated in dictum—in our view erroneously—that the statutory term "property" applied in this context only to wages demanded for unwanted services, the court rested its decision on a separate ground. It concluded that the dye-throwing episodes were no more than mere "* * * by-play while trying to gain larger wages or better * * * hours and conditions * * *" (457 F. 2d at 77), and thus not acts of force or violence aimed at coercing the employer into agreeing to higher wages, within the statutory definition of "extortion" (457 F. 2d at 78).

matter to be resolved by the jury; it could not justify the dismissal of the indictment in the instant case. Here the charge is "conspiracy" to "obtain * * * property * * * in the form of wages and other things of value * * * by * * * actual force * * *" (App. C, p. 14a), to wit: by firing on three separate occasions into a transformer substation owned by Gulf States "using a high powered rifle" (*ibid.*), by "drain[ing] oil from a [company] transformer" (App. C, p. 15a) on another occasion, and on still another occasion by blowing up a company "transformer substation * * * using twelve sticks of dynamite" (*ibid.*). Such conduct, if proved, is on its face not "mischievious misconduct," or merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery, supra*, 457 F. 2d at 78). It is, instead, exactly the type of extortionate conduct Congress intended to reach by the phrase, "wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)).

Violence of this sort for the purpose of "obtaining property" is as much a crime under the Hobbs Act when committed in the context of a labor dispute as when committed in other contexts. Union employees and officials are not excepted from coverage as the Act as now written. The facts pleaded in this indictment reflect the precise evil which the intentionally broad language of the statute intended to proscribe.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be reversed and the indictment reinstated.

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